IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 94 OF 2001.

Shri Vidyadhar Baburao Chodankar,
major of age,
married, service,
r/at Chapora, Anjuna,
Bardez, Goa. .... Appellant.

Versus

Smt. Malini Vidyadhar Chodankar,
alias, Malini Krishna Zuvontikar,
major of age, married,
housewife, r/at Customs Colony,
Sada, Vasco-da-Gama, Goa. ..... Respondent.

Shri J. P. Mulgaonkar,Advocate for the Appellant.

Shri A. Kakodkar, Advocate for the Respondent.

CORAM: R. M. LODHA, J.

DATE: 26th OCTOBER, 2005.

ORAL JUDGMENT:

This First Appeal is directed against the Judgment and Decree dated 19th August, 2000 passed by the Civil Judge, S.D. Mapusa whereby the suit filed by the present appellant for annulment of marriage has been dismissed.

2. Vidyadhar and Malini are parties to the litigation. The marriage between them was solemnised in the Office of the Sub-Registrar at Mapusa on 13.05.1993. Thereafter the religious marriage was celebrated on 02.06.1993. According to Vidyadhar, from day one of the marriage, Malini was found to have abnormal behaviour. During the midnight on the first day of their marriage, Malini started shouting and making unbearable noise. Baffled with the behaviour of Malini, Vidyadhar remained in the house for about one month to find out any improvement in Malini's behaviour but no improvement was found. Vidyadhar took Malini to Dr. D'Souza. He found her suffering from incurable mental disease. Vidyadhar, therefore, prayed for annulment of marriage on the ground that Malini was suffering from incurable mental disease and, thus, his consent for contract of marriage was vitiated by mistake.

3. Malini contested the suit filed by Vidyadhar. She denied that she was suffering from any mental illness. The alleged abnormal behaviour that was mentioned in the plaint was also denied. Though she admitted that she was taken to the Doctor, but she denied that she was taken to the Doctor by her husband. According to her she was taken to the Doctor be her brother-in-law. She averred in the written statement that her brother-in-law Gopal assaulted and starved her. Malini averred that Vidyadhar, his brother Gopal and two others took her to her parents place in the car and left her there

after few months of the marriage and her husband never took her back to the matrimonial home. She prayed for dismissal of the suit.

4. The principal issue before the trial Court was whether the husband proved that the wife was suffering from incurable disease.

5. In support of his case, the husband – Vidyadhar (PW.1) examined himself. He also examined the Psychiatrist Dr. Joaquim Victor D'Souza (PW.2), Ganpat Khorjuvenkar (PW.3), Nandesh Malvankar (PW.4) and Chandravati Chodankar (PW.5).

6. On the other hand, the wife – Malini (DW.1) examined herself. She also examined her mother Rukmani Jawadkar (DW.2).

7. Vidyadhar produced the marriage certificate (Exh.PW1/A). The medical report of Malini was produced by Dr. Joaquim Victor D'Souza and exhibited as Exh.PW2/A.

8. The trial Judge after hearing the parties and taking into consideration the evidence on record, dismissed the suit on 19th August, 2000. As already indicated above, aggrieved thereby, the husband is in appeal.

9. I heard Mr. J.P. Mulgaonkar, the learned counsel for the Appellant and Mr. A. Kakodkar for the respondent.

10. That the parties are governed by Civil Law (Family Laws) as applicable in Goa w.e.f 26.05.1911 is not in dispute. Article 1 of Chapter I (of Civil Marriage and its solemnization) provides that marriage is a contract solemnized between two persons of different sex with the purpose of legitimately constituting a family. Article 2 provides that such contract is purely civil and is presumed to be perpetual, without prejudice to its dissolution by way of divorce as per the provisions of the Decree with the force of law dated 3rd November, 1910. Article 3 mandates that all Portuguese shall solemnize the marriage before the official of Civil Registration under the conditions and in the manner established in Civil Law and only such marriage is valid. Chapter III deals with void and voidable marriage. Various grounds are set out which make the marriages between the contracting parties null and void in law as though it had never existed. The Chapter also sets out the grounds for voidable marriage. Articles 18, 19 and 20 which are relevant for the purposes of the present appeal read thus :-

> " Article 18: The marriage to which consent is proved to have been caused by mistake or coercion is voidable.

> Article 19: The suit for annulment of the marriage on the ground of mistake or coercion may be filed only by the spouse whose consent was caused by coercion or by mistake.
>
> Article 20: For the purpose of Article 18 consent caused by mistake is relevant only if it relates to the persons with whom the marriage is contracted and shall be based on any one or more of the following grounds :
>
> (1) Ignorance of his/her status;
> (2) Ignorance of a non-bailable offence not barred by limitation and committed by him/her before the marriage;
> (3) Ignorance of an irremediable and previous physical defect, like impotency and any incurable disease, contagious or hereditary. ”

11. The case of the husband that has been set out in the plaint is that his consent to the marriage was caused by mistake inasmuch as the wife with whom his marriage was contracted suffered from the incurable disease. The suit for annulment of marriage is, thus, based on that ground.

12. The question that falls for determination in this appeal is whether at the time of marriage, the wife was suffering from incurable disease. If so, whether the consent to the contract by the husband was caused by mistake.

13. Vidyadhar examined himself and also examined the other witnesses. The most crucial evidence is that of Dr. Joaquim Victor D'Souza (PW.2). He is the best person who could say about the disease, Malini was suffering from and whether the said disease was incurable. It is he who examined Malini and prescribed treatment. PW.2 is Psychiatrist. He deposed that Vidyadhar approached him for treatment of Malini at his clinic on 11.08.1993. In his deposition, he first narrated the history that was told to him by the husband. Then he examined Malini. He found her preoccupied and smiling to herself. Her hair was disheveled and there was lack of proper rapport. He found that there was no proper link between her thinking process. She was found to be suspicious; she felt that the people in her husband's house got together to kill her and that her food was being poisoned. He admitted that Malini's judgment could not be tested properly. He diagnosed that Malini was suffering from schizophrenia. This opinion was recorded by him in Malini's medical report (Exh.PW.2/A). Dr. D'Souza admitted in his evidence that on 14.08.1993 when Malini visited second time, he found her quite better. This fact was also recorded in the medical report; though she continued to have some doubts about the husband. Then third time on 22.08.1993 when Malini visited his clinic at Corlim, he found her much better. He admitted that schizophrenia of certain types is curable if proper treatment is given to the patient. Their relapse rate generally is 40% in two years with patients who

are on medication and 80% in patients who are not on medication. The evidence of Dr. D'Souza completely dismantles the case of the husband that the wife was suffering from incurable disease. Incurable disease is the disease that cannot be cured. In other words, the patient can be said to be suffering from incurable disease which is not curable. In the present case in a span of ten days, Dr. D'Souza found lot of improvement in Malini's health and mental condition. On 11.08.1993 when Dr. D'Souza examined her, Malini was found to be preoccupied and proper rapport could not be established but that was not the case on 14.08.1993 and 22.08.1993 when she was examined by Dr. D'Souza on the second and third visit. The type of schizophrenia which Malini is said to be suffering, from the evidence of Dr. D'Souza, is not found to be incurable. It is not that any type of mental illness or any type of Schizophrenia would be covered by the expression "incurable disease" in Article 20. Such disease must be incurable. Vidyadhar, of course, stated about the abnormal behaviour of the wife on the first night of the marriage itself when at about 3 a.m. she is said to have suddenly cried and made noise but from his evidence it cannot be held that the wife is suffering from incurable disease. His evidence, that during the time Malini stayed with him and at the matrimonial home, she was not showing any improvement, is falsified by the evidence of Dr. D'Souza (PW.2) who found improvement in her in a span of about ten days from 11.08.1993 to 22.08.1993. The evidence of Ganpat

Khorjuvenkar (PW.3) is also of not much help to the case of the plaintiff. PW.3 has spoken about Malini smoking cigarettes. That does not mean she was suffering from incurable disease. The evidence of Nandesh Malvankar (PW.4) also does not carry the case of the husband further. Chandravati (PW.5) is Vidyadhar's mother. She has stated about Malini's abnormal behaviour of pelting stones and whistling. As already indicated above, in the light of the evidence of Dr. D'Souza (PW.2), the evidence of PW.5 is not sufficient to hold that Malini was suffering from incurable disease.

14. Upon scan and scrutiny of the evidence on record, I have no hesitation in holding that the husband failed to prove that the wife was suffering from incurable disease. Having failed to establish that the wife was suffering from incurable disease, the question of his consent to the marriage having been caused by mistake does not arise. The husband, thus, failed to make out a case for annulment of marriage under Article 18 of the Family Laws.

15. The conclusion arrived at by the trial Court is proper and does not call for any interference.

16. First Appeal has no merit and is dismissed with no order as to costs.

R. M. LODHA, J.

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